

**NOTICE OF PROPOSED RULEMAKING**  
**TITLE 17, CALIFORNIA CODE OF REGULATIONS**  
**DEPARTMENT OF DEVELOPMENTAL SERVICES**  
**DIRECT CARE STAFF TRAINING**

The Department of Developmental Services proposes to amend Title 17, California Code of Regulations, Division 2, Chapter 3, Subchapter 4 by adding Article 6, including Sections 56031, 56033, 56034, 56034.1 and 56035; by amending Article 1, Section 56002; by amending Article 7, Sections 56036, 56037 and 56038; by amending Article 8, Section 56048; by amending Article 9, Sections 56054 and 56057; by amending Article 10, Sections 56059 and 56060. The Department further proposes to amend Title 17, California Code of Regulations, Division 2, Chapter 3, by adding Subchapter 4.3, Sections 56931, 56932, 56933, 56934, 56936 and 56937.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on May 30, 2000. The Department will only consider comments received at its headquarters by that time. Comments may be submitted by FAX to (916) 654-1716. We request that any comments submitted by FAX also be mailed to the Department in hard copy. The mailed copy need not arrive by the close of the comment period as long as the FAX is received before the deadline. Please submit all comments to the Department's contact person as designated below.

**PUBLIC HEARING**

Two public hearings are scheduled. A public hearing to receive oral and written comments is scheduled for 10:00 a.m. on May 25, 2000. This hearing will be held at 107 S. Broadway, Room 1138 (auditorium), Los Angeles, California. Another public hearing to receive oral and written comments is scheduled for 10:00 a.m. on May 30, 2000. That hearing will be held at 744 P Street, Sacramento, California. The Department requests that persons who make oral comments at either public hearing also submit a written copy of their testimony at that hearing. The hearing locations have wheelchair access.

**AUTHORITY AND REFERENCE**

Authority: Section 11152, Government Code; Code; Sections 4681.4(e) and 4681.5(e), Welfare and Institutions Code. Reference: Sections 4681.4 and 4681.5, Welfare and Institutions Code; Section 1085.2, Title 22, California Code of Regulations.

## **INFORMATIVE DIGEST/ PLAIN ENGLISH POLICY STATEMENT OVERVIEW**

The Department proposes to improve quality of care in community care facilities by increasing compensation to direct care staff and requiring much-needed training to enhance direct care staff competency.

Currently, the requirements for direct care staff of CCFs are: 1) complete an on-site orientation within the first 40 hours of providing consumer services in the facility; and 2) receive on-the-job training as necessary to implement consumer IPPs. Both administrators and direct care staff are required to complete a minimum number of hours of continuing education in the following areas: 1) consumer services as described in the program design; 2) promotion of consumer's rights, health safety, and social and physical integration; and 3) the interdisciplinary team process.

The Department proposes to establish the regulatory structure for the direct care staff 70-hour training program required by Welfare and Institutions Code Section 4681.5(a).

Section 56002 is amended for consistency with this rulemaking.

Section 56031 is adopted to define those phrases having special meanings in Article 6.

Section 56033 is adopted to describe to whom the direct care staff competency-based training requirement applies and the dates for compliance, to require the Department to provide direct care staff with written notification of test results, to require direct care staff to take a competency test to assess direct care staff competency in specific knowledge area(s), to require the Department to provide the administrator with written notification direct care staff's successful completion of the competency testing requirement, to require the Department to provide the administrator with written notification direct care staff's successful completion of the competency testing requirement with knowledge area(s) identified as needing improvement, to require the Department to provide the administrator with written notification of a direct care staff's failure to successfully complete the competency testing requirement, to require the administrator to be responsible for ensuring that any direct care staff who has knowledge area(s) identified as needing improvement obtains the additional training necessary to rectify the knowledge area(s) which were identified as needing improvement, to specify the requirements for direct care staff who fail to satisfactorily complete the testing requirement, to require the administrator to comply with any additional condition(s) that the regional center may require to protect consumer health and safety, to specify the requirements for successful completion of the second 35-hour training segment, and to require the administrator to enroll direct care staff in the training on a schedule which ensures the opportunity for satisfactory completion of the training by all of the facility's direct care staff.

Section 56034 is adopted to specify the training and testing requirements for Foster Family Agencies (FFAs).

Section 56034.1 is adopted to permit the regional center to waive the requirement for certified parents and FFA staff to complete the competency-based training and testing requirements, to require the FFA to submit a training plan to the regional center, to require the regional center to either approve or deny the training plan, to permit the FFA to appeal the regional center's denial of the FFA's training plan to the Department, and to require the Department to render a written decision to uphold or deny the regional center's denial of the FFA's request for waiver.

Section 56035 is adopted to waive a facility which is paid a prevailing rate from the training and competency testing requirements specified in Article 6.

Section 56036 is amended to require the facility's staff training plan to include any additional training in any knowledge area(s) which is identified as needing improvement and a time frame for completing the additional training and to specify a time frame for completing the additional training.

Section 56037 is amended to require Service Level 2, 3 and 4 administrators to complete any additional training in a specified knowledge area(s) which has been identified as needing improvement, to specify that successful completion of the competency-based training and competency test satisfies the continuing education requirements of Section 56037 for the year in which the training is satisfactorily completed, and to specify that passing the challenge test does not satisfy the continuing education requirements of Section 56037.

Section 56038 is amended to require direct care staff to complete any additional training in a specified knowledge area(s) which has been identified as needing improvement, to specify that successful completion of the competency-based training and competency test satisfies the continuing education requirements of Section 56038 for the year in which the training is satisfactorily completed, and to specify that passing the challenge test does not satisfy the continuing education requirements of Section 56038.

Section 56048 is amended to require the facility liaison to review personnel files for compliance with Sections 56033, 56034, 56034.1 and 56036.

Section 56054 is amended to add two new substantial inadequacies. The first new substantial inadequacy is licensee failure to file an accurate and complete report verifying the use of rate increase funds authorized by Welfare and Institutions Code Section 4681.4(a), licensee failure to utilize the rate increase funds for the purposes authorized by Welfare and institutions Code Section 4681.4(c), or licensee failure to

utilize Welfare and Institutions Code Section 4681.4 rate increase funds for a purpose which has been approved by the Department. The second new substantial inadequacy is licensee failure to ensure that all direct care staff take the training described at Welfare and Institutions Code Section 4681.5(a), licensee failure to ensure that a direct care staff completes any additional training, or licensee failure to comply with Section 56033(f)(1) when the direct care staff has failed to satisfactorily complete the competency-based training and competency testing.

Section 56057 is amended to conform to current law, to authorize the recovery of misused funds paid pursuant to Welfare and Institutions Code Section 4681.4(c), and to authorize the offset of amounts equal to misused portion of funds paid pursuant to Welfare and Institutions code Section 4681.4(c) from future reimbursements to the licensee.

Section 56059 is amended to add documentation which must also be contained in the facility file. The additional documentation includes evidence of compliance with the training requirements in Sections 56033, 56034 and, if applicable, Section 56034.1; a copy of any direct care staff's written notification regarding challenge or competency testing; each written approval issued by the Department authorizing the use of Welfare and Institutions Code Section 4681.4(a) rate increase funds; and documents pertaining to a Foster Family Agency's request for a waiver.

Section 56060 is amended to require the regional center's records to contain a copy of an approval by the Department for the use of rate increase funds for a purpose other than those specified in Section 56932(a)(1) through (3).

Section 56931 is adopted to define those terms having special meanings in Subchapter 4.3.

Section 56932 is adopted to specify the uses of Welfare and Institutions Code Section 4681.4(a) rate increase funds.

Section 56933 is adopted to require each licensee who receives rate increase funds to provide to the regional center verification of the use of the rate increase funds.

Section 56934 is adopted to require each licensee who receives rate increase funds to report in writing the use of those funds to the regional center, to specify a date for the licensee's written report to the regional center, to specify the content of the licensee's written report to the regional center, to require the regional center to review a sample of the reports to verify the use of the rate increase funds, to specify the work records which the regional center is authorized to review, and to require the regional center to retain a copy of each report of the use of rate increase funds for a period of three years.

Section 56936 is adopted to describe the criteria for approval of use of the rate increase funds for other purposes. The payment of compensation equivalent on an hourly basis to at least one hundred and fifty percent (150%) of California's minimum wage for the pay period including December 31, 1998 is a precondition to consideration for authorization of other uses of rate increase funds. No other uses of rate increased funds will be considered unless this precondition is met. Any other use of rate increase funds is required to improve the quality of care provided to consumers.

Section 56937 is adopted to describe the process by which licensees may seek the Department's approval to use the rate increase funds for other purposes. Licensees must submit to the Department documentation sufficient to establish compliance with the requirement to have compensated all direct care staff having a minimum of six months experience at a rate of pay equivalent to at least one hundred and fifty percent of California minimum wage for the pay period including December 31, 1998. Licensees are required to describe the other proposed use of rate increase funds and to explain how it complies with the requirements of Section 56936(b). Section 56937 also requires the licensee's application to be received by the Department by a specific date, prohibits the implementation of the use of rate increase funds prior to the Department's approval and specifies that the Department's decision is final.

### **SMALL BUSINESS DETERMINATION/DETERMINATION/AVAILABILITY OF NONCONTROLLING PLAIN ENGLISH SUMMARY**

DDS has determined that the proposed regulations will affect small business. The Department has determined that it is not feasible to draft the regulations in plain English due to the technical nature of the regulations; however, a noncontrolling plain English summary of the regulations is available from the department contact person named in this notice.

### **LOCAL MANDATE AND FISCAL IMPACT DETERMINATIONS**

The Department has determined that the proposed regulatory action does not impose: 1) a mandate on local agencies or school districts, 2) significant costs or savings to any state agency, 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, 4) other nondiscretionary costs or savings imposed on local agencies, or 5) costs or savings in federal funding to the state.

### **ECONOMIC IMPACT AND BUSINESS ASSESSMENT**

The proposed action has been assessed relative to the extent that it will create new jobs within the State of California, help in the creation of new business within the State and the expansion of businesses currently doing business within the State of California.

The proposed action has also been assessed relative to the extent that it will eliminate any jobs within the State of California, help in eliminating business within the State or inhibit the expansion of businesses currently doing business within the State of California. Based on the DDS's findings it is anticipated that the proposed action will have no economic effect on the creation of new jobs or businesses, the elimination of existing jobs and businesses within the state, nor on the expansion of businesses currently doing business within the State of California.

DDS has determined that the proposed regulations will not have: 1) a significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states, 2) a significant potential cost impact on private persons or directly affected businesses, or 3) a significant effect on housing cost.

## **ALTERNATIVES CONSIDERED**

The Department must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements, or arguments with respect to alternatives to the proposed regulations, during the written comment period or at the public hearings.

## **CONTACT PERSON**

Comments and inquiries concerning the proposed action may be directed to:

Department of Developmental Services  
Office of Regulations, MS 2-11  
Attention: David Judd  
1600 Ninth Street, Room 240  
Sacramento, CA 95814

Phone: (916) 654-2257  
FAX: (916) 654-1716

## **AVAILABILITY OF RULEMAKING DOCUMENTS**

The Department has prepared and has copies ready for public review of the exact text of the proposed regulations, as well as an Initial Statement of Reasons for the proposed regulations, and all the information upon which the proposed regulations are

based. The text, Initial Statement of Reasons and other documents pertaining to this rulemaking may be viewed over the Internet at [www.dds.cahwnet.gov](http://www.dds.cahwnet.gov).

Copies of the text and Initial Statement of Reasons of the proposed regulations, along with all other public records, reports, documentation or other documents pertaining to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying during normal business hours throughout the rulemaking process from the contact person at the above address.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the close of the 45-day comment period the Department may adopt the proposed regulations as described in this notice. If the Department makes substantive modifications, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before the Department adopts the regulations as revised. Requests for the modified text should be made to the Department's contact person named above.